

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

RECEIVED

JUN 30 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
 Petition of Cox Virginia Telcom, Inc. )  
 Pursuant to Section 252(e)(5) of the )  
 Communications Act for Expedited )  
 Preemption of the Jurisdiction of the )  
 Virginia State Corporation Commission )  
 Regarding Interconnection Disputes with )  
 GTE South Incorporated )

Docket No.

00-126

**PETITION OF COX VIRGINIA TELCOM, INC.  
 PURSUANT TO SECTION 252(e)(5) OF THE COMMUNICATIONS ACT**

Cox Virginia Telcom, Inc. ("Cox"), by its attorneys, and pursuant to Section 252(e)(5) of the Communications Act, as amended (the "Act"), and Section 51.803 of the Federal Communications Commission's ("FCC") rules, respectfully petitions the FCC to preempt on an expedited basis the jurisdiction of the Virginia State Corporation Commission ("Virginia Commission") to the extent described below. The Virginia Commission has failed to act on Cox's requests to resolve a dispute concerning the interconnection agreement in effect between Cox and GTE South, Incorporated ("GTE"). Cox files this Petition in light of the recent FCC decision granting a similar petition of Starpower Communications, LLC. ("Starpower") with respect to the same order in which the Virginia Commission declined to act on Cox's request for enforcement of its interconnection agreement.<sup>1</sup>

<sup>1</sup> Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996,  
*continued...*

No. of Copies rec'd 0+4  
 List ABCDE

Specifically, Cox requests that the FCC expeditiously assume jurisdiction over Cox's interconnection and reciprocal compensation dispute with GTE. Cox also requests that the FCC issue an order directing GTE to pay Cox reciprocal compensation for the transport and termination of traffic delivered to Internet service providers ("ISPs"), in accordance the terms and conditions contained in the interconnection agreement agreed to by the parties and approved by the Virginia Commission.<sup>2</sup> For administrative convenience, Cox further requests that its dispute with GTE be resolved in tandem with the Starpower/GTE proceeding that has been initiated in the wake of the FCC's *Starpower Order*.

#### **I. BACKGROUND**

Cox and GTE first entered into an interconnection agreement for Virginia in March 1997. GTE and Cox began to exchange traffic in accordance with the agreement in September 1997. The agreement provides that each party on whose system local calls originate shall pay compensation to the other for the completion of "local" calls, a term that is defined broadly in the agreement. GTE did not at any time during interconnection negotiations or prior to execution take the position that the completion of calls to ISPs should be excluded from the local reciprocal compensation obligations contained in the agreement. In August 1998, however, GTE wrote

---

...continued

*Memorandum Opinion and Order*, CC Docket No. 00-52, FCC 00-216 (rel. June 14, 2000) ("*Starpower Order*").

<sup>2</sup> Cox understands that the FCC may, like in the *Starpower Order*, direct the initiation of proceedings following its decision to preempt the Virginia Commission.

Cox the first in a series of letters disputing reciprocal compensation charges and refusing payment to Cox for the termination of ISP traffic on Cox's network.

Cox filed a petition with the Virginia Commission in March 1999, requesting enforcement of its interconnection agreement's reciprocal compensation provisions with GTE. The Virginia Commission refused to act on the dispute or enforce the agreement, primarily because of its stated jurisdictional concerns.<sup>3</sup> In its January 24, 2000 opinion, the Virginia Commission concluded that "[i]n the absence of any FCC rules on inter-carrier compensation for ISP-bound traffic, any interpretation of the instant agreements we might reach may well be inconsistent with the FCC's final order in its rulemaking."<sup>4</sup> Thus, "[g]iven the possibility of conflicting results, . . . we believe the only practical action is for this Commission to decline jurisdiction and allow the parties to present their cases to the FCC."<sup>5</sup>

On March 16, 2000, Starpower filed a petition with the FCC seeking preemption of the Virginia Commission and requesting that the FCC act on Starpower's interconnection and reciprocal compensation disputes with Bell Atlantic-Virginia and GTE. Starpower requested the FCC to "preempt the jurisdiction of the Virginia State Corporation Commission regarding the interconnection disputes between Starpower and BA-VA and GTE; conduct such proceedings as it deems necessary to determine the merits of the disputes; . . . [and] issue an order interpreting

---

<sup>3</sup> Starpower had filed similar petitions at the Virginia Commission against GTE and Bell Atlantic, which were addressed jointly with the Cox interconnection enforcement proceeding in a consolidated order.

<sup>4</sup> Case Nos. PUC990023, PUC 990046, at 6, January 24, 2000.

<sup>5</sup> *Id.*

the reciprocal compensation provisions of the interconnection agreements between Starpower and BA-VA and GTE. . . .”<sup>6</sup>

On June 14, 2000, the FCC granted Starpower’s petition and preempted the Virginia Commission’s jurisdiction over the outstanding interconnection disputes. According to the FCC, the Virginia Commission “‘failed to act to carry out its responsibility’ under section 252.”<sup>7</sup> Moreover, the “Virginia Commission did not dismiss Starpower’s petitions because of jurisdictional or procedural defect, but rather expressly declined to resolve the merits of the case.”<sup>8</sup> The FCC, therefore, preempted the Virginia Commission for failure to carry out its statutory responsibilities under Section 252 of the Act. Because the Virginia Commission failed to act on Cox’s request in precisely the same manner as Starpower, Cox requests that the Commission act expeditiously to grant this Petition to preempt the Virginia Commission and to enforce its interconnection agreement with GTE.

## **II. ARGUMENT**

### **A. The FCC Should Preempt the Virginia Commission**

Grant of this Petition is required by the reasoning of the *Starpower Order*. There, the FCC established its intent to “apply Section 252(e)(5) . . . to matters outside the scope of

---

<sup>6</sup> Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, CC Docket No. 00-52, at 10, filed March 16, 2000.

<sup>7</sup> *Starpower Order* at ¶ 7 (citing 47 U.S.C. § 252(e)(5)).

<sup>8</sup> *Id.* at ¶ 8.

mediation and arbitration.”<sup>9</sup> The FCC expressly recognized that state commissions have the responsibility under Section 252 to address intercarrier disputes arising from state-approved interconnection agreements. The FCC thus found that the Virginia Commission, in declining to rule on Starpower’s petition for enforcement of the Starpower-GTE reciprocal compensation provisions, had failed to carry out its statutory obligations.

In the present case, Cox is in the same position as Starpower was before the FCC granted its petition. Absent preemption by the FCC, Cox effectively will be left without a legal remedy to resolve the correct interpretation of the reciprocal compensation provisions of the Cox/GTE interconnection agreement. Cox will continue to be unable to collect from GTE the full amounts due to Cox under the agreement. Today, Cox continues to transport and terminate the traffic GTE presents to Cox for termination, including calls to ISPs. Despite the explicit reciprocal obligations set forth in the interconnection agreement with Cox, GTE continuously refuses to pay for the transport and termination of the calls that, in GTE’s estimation, are made to ISPs.<sup>10</sup> On average, Cox is losing \$3,833 per day in lost transport and termination revenues. In fact, since the time the parties negotiated their interconnection agreement, GTE has failed to pay a total of \$3,095,120 to Cox for its transport and termination of GTE’s outbound traffic.<sup>11</sup>

---

<sup>9</sup> *Id.* at ¶ 5.

<sup>10</sup> As described below, GTE attempted to make payments that are substantially less than the amounts it has been billed by Cox, claiming that it bases those payments on the number of non-ISP calls. GTE has not provided any explanation of how it has calculated these amounts.

<sup>11</sup> GTE has recently made payments through Cox’s billing vendor of \$32,140.18 and \$440,285.52 stating that these are payments “in full.” Cox is returning these payments in accordance with the Universal Commercial Code, since they do not constitute “payment in full” by several measures.

Because the Virginia Commission has declined to act on Cox's continued requests for resolution of this matter, Cox, like Starpower, has no remedy for these losses unless the FCC asserts jurisdiction over, and resolves, this dispute.

For the FCC to assume jurisdiction under Section 252(e)(5), it must find that a state commission has failed to act in any proceeding or matter under Section 252. In this case, like the Starpower case, the Virginia Commission clearly has failed to act and carry out its obligations under Section 252. Thus, because the Virginia Commission has acted contrary to its responsibilities and because Cox's Petition to preempt the Virginia Commission is similar or identical to the Starpower's petition already granted by the FCC in the *Starpower Order*, the FCC should also grant Cox's Petition.

**B. Expedited Action and Consolidation Is Required**

Cox requests expedited action on this Petition. As shown above, Cox's request for preemption is consistent with the precedent established in the *Starpower Order*. Indeed, because the order in which the Virginia Commission declined to act is the *same order* at issue in the *Starpower* case, there is no basis for any different result. The FCC accordingly can act promptly on Cox's request without further expending significant time or resources.

Further, Cox requests that its enforcement case before the FCC be resolved in tandem with the pending Starpower enforcement proceeding. Typically, in the interest of administrative convenience, the FCC will consolidate its consideration of matters which involve the similar

parties and related issues.<sup>12</sup> Indeed, the FCC has concluded that where complaints filed . . . involve the same defendant and *virtually identical facts and legal issues*, we see good cause to consolidate the [] proceedings.”<sup>13</sup> In this case, the facts and legal issues are identical. Both Starpower and Cox have sought preemption based on the Virginia Commission’s failure to act on interconnection disputes with GTE. Cox, like Starpower, bases its request for preemption on the Virginia Commission’s violation of Section 252(e)(5) of the Communications Act. The FCC thus will not be required to establish *any* new legal precedent or review the law under a new set of facts. Moreover, because the Cox and Starpower cases involve substantially identical legal and factual issues, consolidation of Cox’s claims against GTE with the Starpower follow-on proceeding, which is pending at the Enforcement Bureau, will be a significantly more efficient use of administrative resources than separate proceedings. Thus, the FCC should expeditiously grant Cox’s Petition and consider its complaint in tandem with the Starpower/GTE dispute.

---

<sup>12</sup> See, e.g., Falcon Cable Systems; Petition for Reconsideration and Appeals of Local Rate Orders of the Regional Cable Commission, *Memorandum Opinion and Order*, 14 FCC Rcd 21301, ¶ 2 (1999); Petition of Armstrong Utilities, Inc. for Modification of Market of Station WGGN-TV, Sandusky, Ohio; Christian Faith Broadcast, Inc. against Armstrong Utilities, Inc. for Carriage of WGGN-TV, *Memorandum Opinion and Order*, 12 FCC Rcd 2498, ¶ 1 (1997).

<sup>13</sup> Media General Cable of Fairfax County, Inc. Complainant v. Starpower Communications, LLC, Defendant; Media General Cable of Fredericksburg, Inc. Complainant v. Starpower Communications, LLC Defendant; Open Video System Complaints, *Memorandum Opinion and Order*, 14 FCC Rcd 7253, note 2 (1999) (emphasis added).

### III. CONCLUSION

For all these reasons, Cox Virginia Telcom, Inc. respectfully requests that the FCC act in accordance with this Petition.

Respectfully Submitted,

**COX VIRGINIA TELCOM, INC.**



---

Laura Phillips  
J.G. Harrington  
Laura S. Roecklein

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2000

June 30, 2000



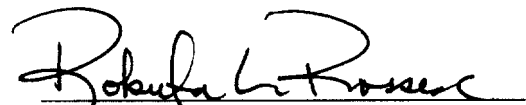
## CERTIFICATE OF SERVICE

I, Roberta L. Rosser, hereby certify that on this 30th day of June, 2000, true and correct copies of the foregoing Petition of Cox Virginia Telecom were served via First Class Mail on:

Virginia State Corporation Commission  
1300 East Main Street  
Richmond, VA 23219

John F. Dudley  
Senior Assistant Attorney General  
Division of Consumer Counsel  
Office of Attorney General  
900 East Main Street, 2nd Floor  
Richmond, VA 23219

Stephen C. Spencer  
GTE South Incorporated  
Three James Center  
Suite 1200  
1051 East Cary Street  
Richmond, VA 23219



Roberta L. Rosser